IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.154 OF 2004
IN
SUIT NO.1041 OF 1992

The New Age Co-op.Hsg.Society Ltd. .. Plaintiffs

Vs.

Freddie Cajetan Gonsalves & Ors. .. Defendants

Mr.J.Rais with Mr.A.H.Bakhija for the plaintiffs

Mr.M.K.Mukadam for defendant no.4 to 6

Mr.Anand Grover i/b Mr.P.L.Mahadik for defendant no.1 only

CORAM : S.U.KAMDAR, J

DATED : 25TH APRIL 2005

P.C.:

1. The present chamber summons is taken out under Order XI Rule 1 of the CPC for administering the interrogatories. The suit has been filed by the plaintiff Co-op.Housing Society interalia for the reliefs of specific performance of the three agreements which are supposed to have been executed in favour of the plaintiffs. The defendants are resisting the said claim of the plaintiff for specific performance. The present Chamber Summons

is taken out by the defendant seeking answers to the various questions as set out in the schedule 2 of the said chamber Summons.

2. The questions in my opinion are firstly in the nature of cross-examination and secondly it has been contended by the learned counsel for the defendants that they are sought on a ground that the answers to the questions are negative then in that event the plaintiff can be non suited without the trial of the suit. In support of aforesaid contention raised by the learned counsel for the defendant the learned counsel has relied upon the Judgments of the Calcutta High Court in the case of Jamaitrai Bishansarup v. Rai Bahadur Motilal Chamaria reported in AIR 1960 Calcutta 536, the Judgment of this court in the case of Sonia Senroy v. Amit Senroy reported in AIR 1998 Bombay 302 and the Judgment of the learned Single Judge in Chamber Summons No.964 of 1998 in Suit no.4594 of 1996. In my opinion the questions which are framed as set out in schedule 2 are in the nature of cross-examination because it seeks to details about the performance of the agreement for it is well

settled that in a suit for specific performance at the trial of the suit party has to establish that whether he was performed his part of obligation or not and whether he was ready and willing to perform the balance obligations. These enquiries are not permissible by way of interrogatories under Order XI Rule 1 of the Civil Procedure Code. In view of the judgment of the Apex court in the case of Raj Narain v. Indira Nehru Gandhi reported in AIR 1972 SC 1302 it is settled law that the interrogatories cannot be in the nature of cross-examination without any examination in chief. In view thereof, chamber summons is dismissed. No order as to costs.